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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert K. Corbin

March 16, 1981

Mr. David H. Hunt
Deputy County Attorney
Office of the Cochise County Attorney
P.O. Drawer CA
Bisbee, Arizona 85603

Re: I81-042(R81-032)

Dear Mr. Hunt:

Pursuant to A.R.S. § 15-253.B, we decline to review your opinion dated February 17, 1981 to the Superintendent of Sierra Vista Public Schools concerning school budget revision.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:clp

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February 17, 1981

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Mr. Frank Samuelson, Superintendent
Sierra Vista Public Schools
4001 Fry Boulevard, N.E.
Sierra Vista, Arizona 85635

EDUCATION OPINION
ISSUE NO LATER THAN
5-8-81

Dear Mr. Samuelson:

This letter is in response to your request for an opinion in which you ask the following question:

> "May a school district revise its final budget and budget limit upward to reflect an unanticipated increase in Federal Impact Aid which was not, and could not, have been included in the initial adopted budget and spending limit?"

Your request is occasioned by a notice from the State Department of Education to the effect that your upward adjustment of the 1979-80 budget improperly resulted in the inclusion of some $515,620.68 of unanticipated aid in the budget and budget limit. The Department concludes that, as a result of this action, $515,620.68 of state aid was earmarked for your districts' use, and that your revenue control limit will now be reduced by a like amount. As a result, your state aid payments for the current budget year are to be reduced by a like amount with payment adjustments to begin in March, 1980. You have further indicated that interruption in the flow of aid of this magnitude will have catastrophic consequences for the continued effective operation of the Sierra Vista Districts.

The notice from the Arizona Department of Education indicates that its determination is based upon the

conclusions reached in Attorney General's Opinion 80-26, in which it was held that the Holbrook Unified School District could not raise its budget to the maximum limit where it did not do so in its initial 1978 through 1980 adopted budget. I have reviewed Attorney General's Opinion 80-26 in light of your present circumstances, and it appears that the actions of the Holbrook District, as addressed in the Attorney General's Opinion, differ substantially from your own. Therefore, it is my conclusion that the adjustments that you made to reflect the additional federal aid were permissible given the existing statutory constraints and circumstances.

Initially, it should be noted that the Holbrook District sought to raise its Maintenance and Operation Budget to the maximum limit from a level that had been set below that limit, and that it apparently did so without any change of circumstances such as additional funding sources or increases in enrollment. In contrast, the Sierra Vista districts had already budgeted to the maximum allowable limits in their initially-adopted budgets.

One statutorily mandated compenent of the districts' budget limits was the amount received in Federal Impact Aid." As provided at that time, in A.R.S. §15-1202(J):

> "For the budget year 1974-75, and each year thereafter, the aggregate school district budget shall be the sum of the following:
>
> 1. The budget cost level for the budget year.
>
> 2. The amount of budget increase authorized for the current or a previous year subsequent to July 1, 1973 by a special election called in accordance with the provisions of §15-1202.01.
>
> 3. Distribution from the county school fund, §15-1238 and from the county school reserve fund, §§15-1246 and 15-1247.

4. Federal Assistance (emphasis added)[1]
* * * *

Included in the budget and the limits at the time the 1979-80 budget was initially adopted was PL 81-874 aid in the amount of $199,841 for your districts. You have indicated that this budgeted amount was based upon district estimates of the amount of aid expected taking into account an announced federal plan to reduce substantially the amount of federal aid that impacted districts could expect to receive. By all accounts, there was no basis, at that time, for inclusion of any greater amount of impact aid in the budget or limit.

Subsequent to the adoption of the budget, however, the federal government apparently reversed itself and allocated substantially more Impact Aid to affected districts. The additional amount made available to the Sierra Vista Districts was $515,620.68. These additional funds could have been included in the initial budget limit, and would have been, had their receipt been anticipated. The districts, therefore, adjusted their limits upward to reflect the additional aid and, since the districts have consistently budgeted to their limits, they also adjusted the budget to conform to the new limit.

Examination of A.R.S. §15-1202(J), in effect at that time, clearly suggests that limit adjustments of this nature are appropriate. The statute specified that "Federal Assistance", not "estimated Federal Assistance" is to be a budget limit component. Unless the final budget limit could be adjusted, the legislative intent that actual aid received be included would be thwarted where actual awards were not made prior to initial adoption of budgets and limits.

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[1]It should be noted that the 1980 amendment to §15-1202(J)(4) excludes PL 81-874 monies from the Federal Assistance classification, but this was not in effect at the time the districts took action on the 1979-80 budget and, hence, will not be relevant to this inquiry.

The records of past budget years indicate that the board has consistently not only budgeted to its limits, but also included all Federal Impact Aid in the budget aid limit for the budget year for which such aid was appropriated by the Federal Government. There is nothing to suggest that the board intended to act in any other manner when approving the final 1979-80 budget. In other words, it has been historical practice of the board to insure that all Federal Impact Aid be available to the district for the appropriate budget year. In this instance, the only way to realize that objective was to increase both limit and budget to reflect the unanticipated increment in federal aid. If the board had not so acted, the district would have been precluded from spending the funds by A.R.S. §15-1202(H), which provides that:

> "No expenditure shall be made by any school district for a purpose not particularly itemized and included in the budget and no expenditure shall be made and no debt, obligation or liability shall be incurred or created in any year for the purpose itemized in the budget in excess of the amount specified for the item irrespective of whether the district at any time has received or has on hands funds in excess of those required to meet the expenditures, debts, obligations and liabilities provided for under the budget except as provided in §15-1245. . . ."

The board's action thus made it possible for the districts to utilize the needed impact aid in the full amount available as intended. The board would have placed the full amount in the initial adopted budget if it had been aware of the amount at the time of the initial adoption.

R81- 032

Where the Holbrook District, without apparent reason, sought to adjust a below-limit budget upward to meet an existing limit, the Sierra Vista Districts, already budgeted to the limit, merely adjusted their limits to comply with §15-1202(J)(4) and adjusted the budget itself in order that it might continue to be maintained at the level of the budget limit.

Attorney General's Opinion 80-~~86~~ 2 further noted that permissible budget adjustments should be strictly limited in order to reflect the overall school financing scheme set forth in Chapter 12, Title 15 of the Arizona Revised Statutes and specifically embodied in §15-1202(B). That section provides that budgets shall be subject to review by the residents and taxpayers of the district in a public hearing. The Attorney General concedes that the "budget cost level" can only be estimated at the time the public hearing is held but further notes that the public can, nevertheless, form opinions "with respect to the district's revenue sources and planned spending, express their opinions on the budget and assess the board's response."

While there may be circumstances when a board might compromise the interest of local residents through post-hearing budget adjustments, it does not appear that such a result has occurred here. In the first place, the adjustments made to the budget and limit did not affect the district's tax rate, which was set in the initially-adopted budget and not subsequently adjusted. As previously noted, the subsequent adjustment was the result of an influx of federal funds. No additional local funds were committed.

It should be remembered that the local residents approved both the sources of district financing and the district's proposals to spend the budget limit. Specifically, the residents approved the receipt of Federal Impact Aid in the amount which was apparently to be available as

of the budget hearing. It seems unlikely tht the public would have objected to the receipt of added Federal Aid if they were aware of its availability at the time of the hearing. As far as local residents were concerned, the additional federal funds represented additional benefits at no additional cost.

Furthermore, the interests of the state in conserving its state aid were not compromised by the board's adjustments. The current State Aid Equalization Plan establishes a five-year period over which aid to school districts is to be equalized. Since your districts are classed as "low spending districts", any cuts made in allowable aid based on mandated reductions in the 1979-80 budget will result in compensatory increases in state aid in subsequent budget years. The federal aid budget adjustment cannot be said to have thwarted the interest of local residents regarding control of local expenditures or compromised the fiscal interests of the State. If state aid is adjusted downward for the present budget period, it will do great harm to local residents' interests in a viable education system, but will not result in new long-term savings for state or local taxpayers due to the operation of the equalization mechanism.

The proposed actions of the Holbrook District may have presented some threat to local or state fiscal controls but a similar threat is not posed in the instant case. The public-review rationale, as presented in Attorney General's Opinion 80-86, would appear to have no application here.

In attempting to discern the legislative intent with regard to adjustments and limits, Attorney General's Opinion 80-86 also considered A.R.S. §15-1245, which provided

that a district may exceed its budget in situations involving increased district enrollment or destruction of school facilities. Section 1245 requires review of any such spending plans by the County School Superintendent at a hearing by the Board of Supervisors. The Attorney General further noted that §15-1245, as then in effect, prohibited such excess spending for increases in school membership where it would:

> "Increase the per capita expenditures per school child allowed by the budget for the district for that year."

The intent of the Attorney General in citing §15-1245 was first, to stress the severe procedural limitations placed on those who sought to increase planned spending levels and, second, to illustrate that such increases would not ordinarily be permitted to increase the per capita expenditure per child. In the present case, however, the board did not attempt to spend in excess of its enacted budget. It merely made an adjustment in its adopted budget and budget limit prior to final enactment of the budget.

It may well be that additional safeguards would be necessary where a district seeks to exceed a budget which has been finally enacted. It is very likely that such a proposal would result in an additional financial burden on local residents and should, therefore, be subject to close scrutiny. Here, however, neither over-spending a final budget nor additional fiscal commitments were at issue.

It would thus appear that reliance upon §15-1245 would not be relevant in analyzing actions taken by your board. There is no similarity between the circumstances of your board's action and those covered by §15-1245.

A.R.S. §15-1202(A) provides that budgets prepared for submission to the County School Superintendent and the Superintendent of Public Instruction:

> "Shall contain the informaton and be in the form as provided by the State Department of Education."

You have indicated that your districts have, as a matter of course, consulted the Department of Education in regard to the mechanics of incorporating PL 81-874 money into the budget process. In response to your request, the Department has consistently recommended the inclusion of the actual amount of PL 81-874 money in the budget and limit even where the amount of such aid could not be determined at the time of initial budget adoption.

You have indicated that this question again arose during the 1979-80 budget adoption period when the budget was being reviewed by Department of Education personnel. In response to questions about the treatment of PL 81-874 funds, Department personnel indicated that further consideration was being given to the handling of such funds, but that for the present, they should be handled in accordance with past budget procedures.

Furthermore, the forms provided for preparation of revised budgets do not suggest any limitations on the right of districts to adjust adopted budgets. Form ADE 71-110R, utilized in the preparation of the revised budget for the 1979-80 budget year, provides space for revision of each budget and limit item at issue in this case. In the "Expenditures" section, separate columns are allocated for adopted and final budget items. In the "Budget Limit" section, specific provision is made for a revised Impact Aid revenue amount (Section 6[c]). Surely, the board could have presumably concluded that such forms were devised in contemplation of adjustments to the items set forth.

The district has apparently acted consistently in accord with procedures established by the Department of Education and it would appear that such reliance is

R81- 032

justifiable. Furthermore you have indicated that many of the financial commitments entered into pursuant to the districts' incorporation of the increased impact aid, such as teachers' contracts, would, by law, have to have been made prior to any notification of changes in policy and prior to issuance of Attorney General's Opinion 80-86.

In conclusion, it would appear that your districts had ample justification for incorporating impact aid payments in the revised 1979-80 budgets. First, unlike the Holbrook situation, the district was incorporating a specifically allowable component into the aggregate budget limit and was allowing a budget already at the budget limit to remain at that limit. Second, neither local nor state fiscal control or expenditures are compromised by the additions to the budget. Third, since the actions taken by your board did not involve spending in excess of an established budget, but only an amendment to a budget and limit prior to final enactment, the procedures and rationale of A.R.S. §15-1245 should not apply here. Finally, your board appears to have acted in justifiable reliance on forms and procedures established by the Department of Education.

Please be aware that the above conclusions are based upon statutory enactments as they existed at the time of final approval of your 1979-80 budget. Subsequent statutory changes, most particularly to A.R.S. §1202(J), could lead to different conclusions based upon board actions in subsequent years. Since, however, your request did not pose questions regarding subsequent years, these issues are not addressed here.

Pursuant to A.R.S. §15-122(B), a copy of this opinion is being sent to the Attorney General for concurrence or revision.

Very truly yours,

BEVERLY H. JENNEY
COCHISE COUNTY ATTORNEY

By:
DAVID S. HUNT
Deputy County Attorney

DSH:pf